

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

(1) CARLOS EDUARDO LOPEZ  
HERNANDEZ,  
(2) DANIEL OSVALDO ROCHA LOPEZ,  
(3) JAIME HEREDIA CASTRO,  
(4) JUAN AVILES BERRELLEZA,  
(5) EDGAR CABRERA,  
(6) OTHON ALONSO VEA  
CERVANTES,  
Formerly charged under the name  
"Carlos Alejandro Castro Perez,"  
(7) CESAR LOYA SOTO,  
(8) MANUEL LOYA SOTO,  
(9) JULIAN GAUGE ORDONEZ,  
(10) JOSE LUIS SIERRA BARRIENTOS,  
(11) HECTOR MANUEL URIAS  
MORENO,  
(12) JORGE VALENZUELA ARMENTA,  
(13) URIEL ZELAYA,  
(14) ARTURO FRIAS CEBALLOS,  
(15) JUAN JOSE HIGUERA GONZALEZ,  
(16) JESUS RENE SARMIENTO  
VALENZUELA,  
(17) ALEK JAMES BAUMGARTNER,

NO. CR 18-5579RBL

UNITED STATES' MOTION TO  
CONTINUE TRIAL DATE AND  
MEMORANDUM IN SUPPORT

NOTING DATE: January 4, 2019

(18) MONIQUE GREEN,  
 (19) ANDREW CAIN KRISTOVICH,  
 (21) JOSE RANGEL ORTEGA,  
 (22) GERALD KEITH RIGGINS,  
 (23) ESTHER LA RENA SCOTT,  
 (24) MICHAEL JOHN SCOTT,  
 (25) KAREN SURYAN,  
 (26) ORLANDO BARAJAS,  
 (27) OSCAR HUMBERTO CARRILLO  
 SALCEDO,  
 (28) MARTIN GONZALEZ JIMENEZ,  
 (29) HECTOR MARIO JACOBO  
 CHAIREZ,  
 (30) JESUS ALFONSO MORA  
 QUINONEZ,  
 (31) RAMON PUENTES, and  
 (32) GREGORY DAVID WERBER,

Defendants.

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Marci L. Ellsworth and Karyn S. Johnson, Assistant United States Attorneys for said District, files this motion to continue the trial date, presently set for February 4, 2019. Through this memorandum, the United States seeks to provide the Court with background on the allegations made by the government, the status of discovery, and with the government's position on a realistic trial date.

### **I. PROCEDURAL HISTORY**

On November 29, 2018, the Grand Jury returned an Indictment under seal charging 30 of the defendants named herein with Conspiracy to Distribute Controlled Substances (heroin, fentanyl, and methamphetamine), and charging six of the defendants named herein in two different money laundering conspiracies. The Grand Jury returned a Superseding Indictment on December 13, 2018, adding an additional defendant and money laundering charges.

1 On December 5 and 6, 2018, agents executed more than 80 search warrants and  
2 arrested 16 of the defendants named herein (all of whom have made their initial  
3 appearances in this District). The warrants resulted in the seizure of 40 pounds of heroin,  
4 8 pounds of suspected fentanyl powder, 6.5 pounds of methamphetamine, 10,000  
5 imitation oxycodone pills (containing fentanyl), and three pounds of cocaine; all weights  
6 are approximate. Agents additionally seized nearly \$450,000 in cash and 39 firearms.

7 Agents also arrested three additional defendants in other Districts; two of those  
8 defendants made their initial appearances in this District on December 21, 2018, and the  
9 United States Marshals Service has notified the government that the third will arrive on  
10 or about January 11, 2019. Trial is set for February 4, 2019, with varying pretrial  
11 motions dates in December 2018.

12 Also on December 5 and 6, 2018, agents arrested another 20 defendants. Twelve  
13 of those individuals were charged by Complaint; eight were arrested on probable cause.  
14 The Grand Jury has since returned Indictments against those defendants, charging them  
15 variously with Distribution of Controlled Substances, Conspiracy to Distribute Controlled  
16 Substances, Possession of Controlled Substances with Intent to Distribute, and/or Felon  
17 in Possession of a Firearm. Their cases have not yet been joined with the Superseding  
18 Indictment in this matter, but the United States anticipates doing so with at least four of  
19 those 20 defendants, within the next 30 to 45 days.

20 Likewise, the United States has not yet sought to add substantive counts to the  
21 Superseding Indictment addressing controlled buys, drugs, and/or firearms seized from  
22 the 31 members of the charged conspiracy throughout the course of the investigation, but  
23 anticipates doing so within the next 30 to 45 days.

24 The current charges against the 31 defendants in the Superseding Indictment stem  
25 from a lengthy investigation by law enforcement into drug trafficking in Pierce, Kitsap,  
26 King, Snohomish, and Skagit Counties. Although the initial investigation indicated the  
27 DTO was distributing heroin to local redistributors, using Facebook Messenger for  
28

communication,<sup>1</sup> as the investigation progressed it became clear the DTO was – in addition to heroin – also distributing significant quantities of imitation oxycodone pills (containing fentanyl) and methamphetamine, through more traditional communications means. Agents conducted thousands of hours of physical and electronic surveillance, obtained Facebook Messenger communications via search warrants, and ultimately obtained authorization to intercept 17 separate target telephones between June and December 2018. Agents intercepted all of the 31 defendants named herein (and others) during these authorized periods, with the majority of the intercepted communications occurring in the Spanish language. Agents also intercepted some, but not all, of the Facebook redistributors during the first authorized period.

## II. DISCOVERY STATUS

Pursuant to 18 U.S.C. § 2518(9), the United States turned over the wiretap applications, orders, and related documents directly to defense counsel who personally appeared at their clients' respective initial appearances. For those defense counsels who were unable to appear in person, the United States is working to provide the wiretap materials to them. The wiretap pleadings alone amount to almost 1,500 pages of material. Additional discovery—consisting of thousands of pages of pen register/tracking affidavits (and data obtained therefrom), materials obtained from a dozen different Facebook accounts, line sheets from the wiretaps, law enforcement reports, audio/video recordings of controlled buys, thousands of hours of mounted surveillance camera footage, and more—is forthcoming. The United States will also be producing audio of the intercepted telephone calls, the majority of which are in the Spanish language. With respect to at least a portion of the money laundering evidence, the United States has more than a terabyte of data to produce. In sum, the discovery in

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<sup>1</sup> Most of the 12 individuals initially charged by Complaint were these "Facebook redistributors." There are other Facebook redistributors also charged by Complaint whom agents have yet to apprehend.

1 this matter will be voluminous. To that end, the parties are exploring the appointment of  
2 an external discovery coordinator.

3 The initial wiretap discovery is subject to a Protective Order already in place. The  
4 United States intends to seek an additional Protective Order for some of the additional  
5 discovery, particularly that dealing with a confidential source. Because the Protective  
6 Order(s) require counsel to review discovery with their clients in person (in lieu of  
7 sending discovery to their clients for review at their clients' leisure), it may take  
8 additional time for counsel to review the discovery materials with their clients.

9 The United States will also need to schedule multiple discovery conference dates  
10 with counsel, given both the number of counsel and the number of search warrant sites  
11 from which agents seized physical evidence.

### 12 **III. TRIAL DATE**

13 The government has raised the issue of a continuance of the trial date with defense  
14 counsel as a group. Although most defense counsel who have responded favor moving  
15 the trial date past the current setting of February 4, 2019, we have not heard back from all  
16 counsel on their position. Those who have responded take different positions on the  
17 length of the continuance.

18 A continuance of some length is certainly appropriate in this multiple-defendant  
19 case. As noted above, discovery in this matter will be voluminous. As the United States  
20 produces discovery material to defense counsel, they will need a substantial period to  
21 review it, evaluate possible pretrial motions, evaluate dispositions short of trial, and to  
22 prepare for trial if necessary. There may be substantial pretrial litigation, given the  
23 multitude of search warrants executed in this case and the interception of multiple phones  
24 over several months. The United States believes all parties need a continuance of the trial  
25 date (with a corresponding continuance of the pretrial motions date) to ensure that the  
26 ends of justice are met. Given the number of defendants, the length of the investigation,  
27 possible motions practice, and the volume of discovery, a continuance of the trial date fits  
28 the criteria set forth at 18 U.S.C. § 3161(h)(7)(A), (B)(i), (ii) and/or (B)(iv).

1       The government respectfully submits that a trial date no earlier than December  
2 2019 is realistic in a multi-defendant matter such as this. That being said, the  
3 government can and will be ready to try this matter whenever the Court requires it to do  
4 so. The government anticipates that some defendants may object to a continuance, or to  
5 the length of the continuance. Assuming the Court believes a continuance is necessary  
6 and appropriate as to some of the defendants, any such objection by the others is without  
7 merit. It is well established that in multi-defendant cases, a reasonable trial continuance  
8 as to *any* defendant tolls the Speedy Trial Act period as to *all* joined co-defendants, even  
9 those who object to a trial continuance or who refuse to submit a waiver under the  
10 Speedy Trial Act. *See* 18 U.S.C. 3161(h)(6) (“A reasonable period of delay [is excluded]  
11 when the defendant is joined for trial with a codefendant as to whom the time for trial has  
12 not run and no motion for severance has been granted.”); *United States v. Messer*, 197  
13 F.3d 330, 337 (9th Cir. 1999) (“It is well established that an exclusion from the Speedy  
14 Trial clock for one defendant applies to all co-defendants.”); *United States v. Daychild*,  
15 357 F.3d 1082, 1090-91 (9th Cir. 2004) (holding that a delay from a grant of trial  
16 continuance to one defendant is also excludable time for a joined co-defendant); *United*  
17 *States v. Butz*, 982 F.2d 1378, 1381 (9th Cir. 1993) (same).

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1 The United States thus respectfully moves the Court for a continuance of the trial  
2 date in this matter to a date no earlier than December 2019, with a pretrial motions  
3 deadline approximately 60 days in advance of the trial date. A proposed Order is  
4 presented with this motion.

5 DATED this 26<sup>th</sup> day of December, 2018.

6 Respectfully submitted,

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8 ANNETTE L. HAYES  
9 United States Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 26, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendants.

s/ John M. Price

John M. Price

Legal Assistant

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